

(1984) 03 KL CK 0011

In the High Court Of Kerala

Case No : C.R.P. No's. 1777 and 2086 of 1981

Pappu Pius and Others

APPELLANT

Vs

St. George Church, Perumanoor and Others

RESPONDENT

Date of Decision : 01-03-1984

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 103, 75, 75(2), 75(4), 80A

Citation : (1984) KLJ 616

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : P.N.K. Achan and N.N. Sugunapalan, for the Appellant; M.R. Parameswaran and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Sukumaran, J.—Ronald, 3. Herring in his book "Land to the Tiller - The Political Economy of Agrarian Reform in South Asia", 1983 Edition - assessed among others, the implementation of the land reforms in the State of Kerala. He has referred to "the severe castigation" of the Land Tribunals "for malpractices and tardy progress". He has referred to the bogus claims frequently put up by the land owners, and the Tribunals having been "sometimes intimidated and" influenced by the local power or political connections of large land-owners"; and has quoted an observation based on long official experience:

for the little man to win, the officer must give special, sympathetic treatment, but often this is not done.

The experience of the kudikidappukaran who had to fight many litigations in different fronts was also noted. Pertinently he states:

... an enormous amount of litigation was involved in landowners' attempts to shift kudikidappukars from one plot to another.

The resultant position is neatly summed up:

In sum, the obtaining of a kudikidappu through official channels was often tedious, costly, and uncertain.

The facts of the present case would substantiate the assessment made by Ronald J. Herring. The litigation centres round a tiny spot in the Cochin City. Years back, the area was unimportant. Developmental activities including the opening of the broadest road in the town named after the Father of the Nation (which later became the National Highway as also the road connecting the Willingdon Island and the Cochin Port) enhanced its values, and consequently skyrocketed the price of the land, due to its obvious commercial importance.

2. The landowner had nearly 31 cents in survey No. 861/2 of Ernakulam Village. The hutment dweller--kudikidappukaran was in the property for nearly six decades. Though he had originally occupied a larger area, the remodelling of the hut about 26 years back, necessitated the execution of a fresh "koolicharthu" or rent note. In that process he had lost about 8 cents, which the landowner promptly annexed to its area by fencing it off. The remaining area in which the hutment dweller resided was a little less than 6 cents.

3. The land legislation, the Kerala Land Reforms Act 1964 as amended by Act 35 of 1969 came into force on 1-1-1970 and soon thereafter started the litigation between the landowner and the hutment dweller.

4. A petition, O.A. No. 2618 of 1971 was filed by the landowner for shifting the hutment dweller. The purpose for which shifting was sought was the construction of a shop building for the landowner. During the pendency of that petition, on 25-7-1973, the landowner obtained permission (Ext. P1 (a)) from the local authority for the construction of the building. After elaborate enquiry that petition was, however, dismissed by the Land Tribunal. The matter was taken up to the High Court by filing O.P. No. 3556 of 1974. The writ petition was dismissed by a Division Bench consisting of Eradi, J. and Viswanatha Iyer, J. on 12-3-1976. The Division Bench noted that "under the amended provision contained in clause (a) of sub-section (2) of S. 75 the relief of shifting the kudikidappu can be claimed only for residential purposes and not for the purpose of construction of shop building which is the requirement mentioned in the application of the writ petitioner." A short note version of the judgment is reported in *St. George Church v. Pappu Brothers*, 1976 KLT S.N. 54 case No. 123.

5. Some intervening developments also may be referred to in this connection. The landowner started within its area, construction operations, including pile driving operations, which the hutment dweller feared would endanger the stability of his humble hut and the safety of its inhabitants. The hutment dweller was then constrained to move the court by filing the suit O.S. No. 366 of 1972 for an injunction restraining the landowner from carrying on and continuing such risky operations. The plaint schedule property was mentioned therein as 6 cents of land. The landowner joined issue in the case. According to him, the extent was only 3 cents, and situate in a corner surrounded by walls. The contention of the

defendant-landowner did not succeed. The suit was decreed.

6. The hutment dweller felt that when the Division Bench spoke against the landowner, that was the end of the litigative harassment from the landowner. Under that feeling, he sought permission of the Municipal Corporation for reconstruction of his hut. Permission was granted. The first step for such reconstruction was the demolition of the old building. That too was almost done. A temporary improvisation was made for continuing the hutment dweller's residence in the property. The landowner, perhaps as a result of close watch over the developments, chose that delicate moment (when the demolition was almost complete) to move the court for an injunction restraining the hutment dweller from reconstructing the building. Interim injunction was granted by the Vacation Judge of the High Court. The suit was later numbered as O.S. No. 322 of 1978.

7. The old hut, as noted earlier had been demolished and the hutment dwellers were residing in what was almost a temporary shed. And at that time, the landowner filed the present shifting application, O.A. No. 365 of 1978. In that petition, an application was moved for an injunction also, LA. No. 6 of 1978. Injunction was ordered by the Tribunal. The hutment dweller then moved the High Court by filing O.P. No. 2795 of 1978. Certain photographs were taken about the property and the features of the structures therein on 22-8-1978. The writ petition was dismissed on 23-8-1978, directing that the contentions could be urged before the Land Tribunal itself. It was thus that the Land Tribunal had to consider the question about the new shifting application and deal with the same.

8. The shifting application had been preceded by a statutory notice Ext. P3 dated 29-5-1978. The tenant replied it on 29-6-1978 by Ext. P6. The shifting application was filed on 14-7-1978, the written statement on 16-8-1978 and the replication on 30-8-1978.

9. The contention of the landowner was that the kudikidappu caused inconvenience for the beneficial enjoyment of the property by the landowner. A proposal to construct the building-the same purpose which had been mentioned in the earlier unsuccessful petition for shifting-was referred to in the present petition. An offer to assign 3 cents in "C" schedule was put forward in that petition. A preparedness for payment of Rs. 750 towards the cost of homestead and Rs. 150/- towards the shifting charge was also expressed.

10. The Land Tribunal took the view that the application should be allowed, as the landowner had felt that the location of the hut caused inconvenience for the beneficial enjoyment of the property. The alternate site offered was found to be fit for erecting a homestead. The cost of homestead was fixed at Rs. 750/- and the shifting charges at Rs. 150/-. The petition was allowed.

11. The appeal before the Appellate Authority by the hutment dweller was unsuccessful. The Appellate Authority confirmed the finding of the Land Tribunal. It, however, found that the landowner himself had admitted the area of the site of the homestead to be 4 cents. That being so, the alternate area should be 4

cents, and not 3 cents as had been ordered by the Land Tribunal.

12. The hutment dweller has preferred C.R.P. No. 1777 of 1981 challenging the adverse findings against him made by the Tribunal and the Appellate Authority.

13. The landowner is aggrieved by the enhanced extent of kudikidappu permitted by the Appellate Authority, 4 cents as against the 3 cents awarded by the Land Tribunal, and has challenged the appellate order to that extent. The petition is C.R.P. 2086 of 1981.

14. The first and important question to be considered is whether the orders of the authorities below in allowing the shifting is based on a proper interpretation of Section 75(4) of the Act. That section enables a landowner to require the kudikidappukaran to shift to another part of land if he "considers that the kudikidappu is so located as to cause inconvenience to him."

15. It was conceded by counsel for the respondent-landowner, that the consideration contemplated under the Section is not a subjective one unamenable to examination by the authorities under the Act. That is the legal position too. Any other interpretation would be rendering a salutary provision imposing restriction on the landowner's inclination for indiscriminate shifting of the poor hutment dwellers, and contained in a welfare legislation, otiose and ineffective. The very fact that the application has to be disposed of by quasi judicial authorities, whose decisions are amenable to correction by the High Court u/s 103, of the Act clearly indicates that the question whether the location of a kudikidappu is inconvenient to the landowner or not, is an objective aspect which could be considered by the statutory authorities. In other words, a mere statement by the landowner that he thinks that the location of the kudikidappu is inconvenient, will not preclude an examination of the objective facts by the authorities empowered in that behalf by the statute, and their arriving at the proper conclusion, even if it be at variance with that of the landowner.

16. Mr. Sugunapalan, appearing on behalf of the Revision Petitioner, very elaborately and exhaustively referred to the statutory developments relevant for adjudication of the issue in the case. The statutory developments in this regard (which had been unfortunately missed by the authorities below) would give clear hint to the interpretation to be placed on the section. Section 75(2) underwent many changes under the amendment effected in the year 1975, brought about by Act 15 of 1976. Valuable enlargement of the rights of the kudikidappukaran had been given thereunder. The legislative intent was clear: it wanted to confer more benefits on the hutment dwellers and imposed larger restrictions on the rights of the landowner. The Land Tribunal merely stated that the kudikidappu is located almost in the middle of A schedule property. Though it referred to the evidence of D.W. 1, which is clearly to the effect that the hut in question was only 20 to 25 ft. away from the eastern extremity of the property, no comment was made on the effect of that evidence. A glance at the sketch of the property prepared in the case, would convince any reasonable authority that it is situate in

a corner, of the property. If the distance of the hut is 20 to 25 ft. from the eastern extremity, it could not be said that the location of the hut is not in a corner. A minimum distance has to be left to satisfy the Municipal Regulations, for the construction of a building in a property. It must also be borne in mind that on the eastern portion of the property is the Mahathma Gandhi Road, the broadest road in the city. Regard being had to these facts, there could hardly be any doubt that the hut was in a corner of the entire property.

17. It is not as though there was not abundance of evidence on that aspect in the case. The Revenue Inspector, as directed by the Land Tribunal, had prepared a sketch of the property. That sketch, as noted earlier, clearly shows the location of the property on the north-eastern corner. There is no evidence whatever which would show that the location of the property is otherwise than in the north-eastern corner. The contention of the landowner in the earlier suit O.S. No. 366 of 1972 contained an admission that the hut was situate in a corner of the property surrounded by walls of the landowner. The Commissioner's report and the judgment of the civil court all clearly establish that the hut is situate in a corner.

18. If the hut is therefore situate in a corner, it cannot be reasonably contended that it causes inconvenience to the landowner (or "person in possession of the land" as the term is used in the sub-section, which in the present context must mean "the landowner").

19. Provisions 1 and 2 in Section 75(4) will throw much light on this aspect of the matter. Under first proviso, when a shifting is allowed, the kudikidappukaran will have the right to opt for the portion to which shifting is to be made. Under the second proviso a restriction is imposed on such option of the kudikidappukaran; if the opted plot is not situated along the boundaries of the land, then the consent of the landowner is required; if, on the other hand, the opted plot is along the boundaries of the land, such consent of the landowner is not required. The essence of these provisions (couched in involved language) is that the kudikidappukaran has the right to opt any plot situate along the boundaries of the land. In other words, the option of the kudikidappukaran to have a site adjoining the boundaries of the land, is absolute and unrestricted. The Legislature had contemplated that normally no inconvenience would exist, if a hutment dweller is located in a place adjoining the boundaries. Experience regarding the problems of kudikidappukars in the State would clearly show that the legislature had intended only to remove the possible hardship of a landowner only in a limited manner. If a hutment dweller is located more or less in a central place, it may quite often cause inconvenience to the landowners' family, when the family, in course of time expands, with the consequential requirement of larger area for use of the landowner or his family. The hutment dweller will not be seriously prejudiced, if in such a situation, the shifting is made to a plot abutting the boundary of the land. A balancing of the rights of both parties is thus achieved. If the view now adopted by the authorities below is accepted and

followed, it would mean that the landowner can harass a hutment dweller, by merely stating that the location of the kudikidappu is inconvenient. Such harassment to the large number of hutment dwellers is totally unintended by the legislature. If such an unimaginative, - and according to me unreasonable - interpretation is placed on the section, it can only generate general discontent, which may, in turn, even result in undesirable developments in a sensitive area of agrarian reform. It is useful in this connection to remember what sir. Edward Coke said in the Easter Term, three hundred sixty nine years back about law and judges. About law he said:

... the law is reason and equity, to do right to all and to keep men from wrong and mischief, and therefore, the law will never make construction against law, equity, and right.

(See Magdalene College, Cambridge Case, (1558-1774) All E.R. Rep. 236 at page 244)

And about Judges:

The office of judges is always to make such construction as to suppress the mischief, and advance the remedy, to suppress subtle inventions and evasions for the continuance of the mischief, *et pro privato commodo*, and to add force and life to the cure and remedy according to the true intention of the makers of the Act *pro bono publico*. (See (page 245)

Generations of lawyers and Judges have appreciatively repeated those words of wisdom. I would bear those principles in mind in attempting an interpretation of this statutory provision. So interpreted, I am of the view that the Legislature has not intended that the kudikidappukaran should be rudely uprooted from a place in which he had for many decades lived (as in this case where the respondents and their predecessors-in-interest had been living for the last 56 years) for the main reason that in the wake of intense developmental activity in the area, his hut abuts an important road. The landowner should not be the exclusive beneficiary of such developmental activities, which are largely, if not exclusively, financed by the State. On the materials before the authorities below it could not be posited that the location of the kudikidappu was in any way inconvenient.

20. The authorities below have misunderstood the scope of the decision in *Ithonamma v. Karappan*, 1975 KLT 152. That decision essentially noted the difference between the provisions of Sections 75(4) and 80A of the Act. The observation of the learned Judge that the Tribunal was not justified in "insisting on proof regarding the bona fide requirement", has to be understood in that context. With great respect, it appears to me that the decision does not lay down any wide proposition that the Land Tribunal need not scrutinise at all the satisfaction of the requirements of Section 75(4) while considering an application for shifting. Even though the word "bona fide" is not used in Section 75(4), it does not mean that the landowner will have his unchecked way in any application for shifting u/s 75(4) of the Act. That is demonstrated from the fact that the

learned Judge himself, in 1975 KLT 152 supra, ultimately gave a direction in the following words:

The shifting application under S. 75(4) filed by the landlord,... shall be enquired into by the Tribunal...

(emphasis supplied)

21. Subjective approach in such situations has been frowned upon by judicial decisions. Even in matters where the State has to consider a question, such subjective approach is not countenanced. Much advance had been made in that area, since *Liversidge's case*, (1942) AC 206, as recently observed by Lord Diplock. If that is the position, as regards decisions to be made by such a powerful entity like the State, a blank cheque as it were could not be given to the landowner, in the matter of shifting of a hutment dweller. The history of the agrarian movement in this State and elsewhere, for protection against such abuses of landowners, would not justify such an interpretation as would expose the hutment dweller to the harassments of the landowner, even in these advanced times. A narrow interpretation which restricts the rights of hutment dwellers would be farthest from the intention of the legislature.

22. The authorities below therefore erred in thinking that a case for shifting the kudikidappukaran had been made out u/s 75(4). The orders have therefore to be set aside. I do so.

23. The above finding would make it unnecessary to consider other contentions raised in the revision petitions. However, it is desirable that views are expressed on an equally important contention urged on behalf of the hutment dweller regarding the very maintainability of the application for shifting. According to him, the application should have been dismissed for failure to comply with a mandatory requirement of the section. The statutory scheme enjoins the landowner to offer to the hutment dweller a land which shall be equal to the extent of existing kudikidappu subject to a minimum of 3 cents in a city. (This is in addition to the payment of the price of homestead and shifting expenses). The important point to be noted is that the kudikidappuakarn under this section is entitled to an equal extent of the existing kudikidappu. This has to be contrasted with the provision in Section 80A(9) relating to the right of the kudikidappukaran to purchase from the landowner an area, on the basis of his status as a kudikidappuakarn. There, the maximum extent which could be purchased is 3 cents. However, when it comes to the question of a petition by the landowner, for shifting the kudikidappukaran, the minimum area to be offered in a city is 3 cents. If the existing kudikidappu is having a larger area, the alternate site to be offered by the landowner should be, equal to the existing area, which must necessarily be larger than 3 cents. In the present case, there is clear and clinching evidence that the existing kudikidappu admeasured over 5 cents. The records such as the commissioner's report in O.S. 366 of 1972, the extent of the property given in the plaint and decree therein, would show that the extent is

more than 5 cents. The landowner did not offer in his notice, Ext. P3 an equal area; he offered only 3 cents, a lesser area. In as much as there was no proper offer as contemplated by the statute, the very application suffers from a fatal infirmity. It must be emphasised that before the landowner could have an opportunity to move the Tribunal for orders u/s 75(4) there must be a due and valid offer and a refusal of the kudikidappukaran to opt for that property. It is not enough a lesser land than that which the kudikidappukaran is entitled to under the Act, is offered. That is not an offer at all as contemplated under a statute. The question of a kudikidappukaran's refusal to opt for a plot does not arise, when the offer itself is non-existent from the point of view of the statutory requirements. Justice Subramonian Poll, as he then was, considered this question very elaborately in O.P. No. 6097 of 1975, a summary of which is given in Bhaskaran Nair v. Ammini, 1979 KLT S.N. 13 in the following words:

It is only in the event of the kudikidappukaran refusing to opt, the owner can point out the plot to which a kudikidappu must be shifted. Refusal to opt necessarily means that he has been asked to opt and he has refused it.

I am in agreement with the reasoning of the learned Judge contained in the aforesaid judgment. In as much as there has not been such a valid offer followed by a refusal on the part of the hutment dweller to accept the same, the petition itself is not maintainable.

24. The above contention has not been satisfactorily or properly dealt with by the authorities below. On a consideration of the statutory scheme, I am clearly of the view that the provisions thereof should be interpreted in a manner more beneficial to the socially weaker section of hutment dwellers. Interpreted that way, it has to be held that Ext. P3 did not satisfy the requirement of a proper offer. Consequently the petition u/s 75(4) was not maintainable before the Land Tribunal.

25. The Appellate Authority had not even adverted to the contentions of the hutment dweller contained in paragraph 6 of his objections or other materials, when it made a sweeping observation that on the part of the hutment dweller, there was no contention regarding the location of the offered plot causing inconvenience.

26. In as much as I have held, that the shifting application has to fail on the above grounds, it is unnecessary to consider the question relating to the shifting charges and the cost of the homestead. However, it has to be pointed out that the cost of the homestead should not be reckoned, taking advantage of the situation whether the hutment dweller had demolished his earlier homestead, in an attempt to put up a better building, at a stage when the earlier attempts of the landowner for shifting had failed, with the pronouncement of a Division Bench of this court. It is not as though there are no materials before the authorities regarding the dimension and particulars of the earlier hut, immediately before its demolition. After all, the idea is to enable a poor hutment

dweller to put up another roof under which he has to live. This is not to be reckoned with reference to debris of the earlier hut at a moment when he had pulled down his earlier building in the hope of putting up a better one. I am of the view that the cost of the homestead and the shifting charges will have to be reckoned afresh on the basis of such materials as are now available. The restriction of the amount as done by the Tribunal and the Appellate Authority, is ridiculously unreasonable. That finding would therefore be set aside.

27. In the light of my above conclusion, there is no scope for interference in the revision filed by the landowner. The hutment dweller is entitled to an alternate area of not less than 5 1/4 cents in the event of shifting being allowed. Shifting cannot be permitted on the basis of the findings of the authorities as rendered now.

28. The Revision Petition of the landowner is also not maintainable for a procedural defect. The State is a necessary party to the Revision Petition. The State, however, has not been impleaded in the revision petition. Though in an attempt to cure the defect, a petition for impleading the State had been filed after the hearing of the case had begun, that was not a proper petition supported by an affidavit and explaining satisfactorily the reasons for the earlier omission. I am not inclined to allow that application at this belated stage. The revision petition is liable to be dismissed also on the ground of non-impleadment of necessary parties.

29. It is unfortunate that the institution like the present landowner, should have adopted an attitude indicative of a vindictiveness against a hutment dweller. Attempts at an amicable settlement, even during the pendency of the revision petitions, were unsuccessful. In the result C.R.P. No. 1777 of 1981 is allowed with costs through out and C.R.P. No. 2086 of 1981 is dismissed with costs.